

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

Plaintiff Elroy W. Browning (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed March 11, 2005. Plaintiff contends that Defendants violated the Eighth Amendment when Plaintiff was sprayed with OC pepper spray in his cell on or about April 9, 2004.

On June 28, 2007, Plaintiff filed a motion for the attendance of incarcerated witnesses. In this motion, Plaintiff lists several incarcerated witnesses that he believes have information relevant to this case. They include: Inmate Stephens #D-61914, Inmate Nall #P-25452, Inmate Hook #T-08976, Inmate Taylor #-J-75560, Inmate Towery #P-10003, Inmate Blackwell #E-72399, and Inmate Richard # C-27964.

On September 24, 2007, the court held a telephonic trial confirmation hearing. At the hearing, the court inquired into whether Plaintiff's proposed incarcerated witnesses had ever

1 expressed a willingness to testify in this action. Plaintiff stated that all had previously indicated  
2 a willingness to testify for Plaintiff, but Plaintiff has not been in contact with these witnesses in  
3 some time because of prison transfers. Based on Plaintiff's representations to the court, the  
4 court will find that these witnesses have indicated a willingness to testify.

5 At the hearing, the court also discussed the fact that several of Plaintiff's incarcerated  
6 witnesses would offer duplicative testify. It appears that several witnesses will give similar  
7 testimony regarding their observations during the incident. After informing Plaintiff about the  
8 duplicative nature of some of his witnesses, Plaintiff informed the court as to which inmates he  
9 would like the court to transport to trial. Based on these discussions, the court stated it would  
10 transport : Inmate Stephens #D-61914, Inmate Nall #P-25452, and Inmate Blackwell #E-72399  
11 for trial. If any of these witnesses are unavailable, Plaintiff asked that Inmate Richard # C-  
12 27964 be transferred.

13 The court finds that the incarcerated witnesses listed below appear to be able to offer  
14 relevant testimony concerning the events at issue in this action and are willing to testify.  
15 However, between the court's research indicates that Inmate Nall, #P-25452 is no longer in  
16 custody, the court will subpoena Inmate Richard # C-27964 instead.

17 All interested parties are informed that it is necessary to grant Plaintiff's motion to allow  
18 the transpiration of these incarcerated witnesses at this time. The CDC needs several weeks to  
19 arrange for transportation. Plaintiff is advised that some or all of the testimony of his inmate  
20 witnesses may be excluded pursuant to a possible motion in limine filed by Defendants. The  
21 court will rule on any motions in limine the morning of trial. Thus, while the court will order  
22 the incarcerated witnesses transported for trial, Plaintiff is not guaranteed that their testimony  
23 will not be limited.

24 The court notes that it is not this court's policy to transport an inmate witness unless the  
25 inmate witness is currently willing to come to court to testify. For that reason, the court is  
26 serving courtesy copies of this order on Plaintiff's inmate witnesses. **If any inmate witness is**  
27

1 **not willing to testify in this action, the inmate witness should contact the court indicating**  
2 **the case name and case number of this action, state that the inmate witness does not wish to**  
3 **be transported to trial, and ask any transportation order be vacated.** Any request to stop  
4 transportation should be filed as soon as possible to avoid any unnecessary transportation.

5 Accordingly, the court orders that:

6 1. Plaintiff's motion for the attendance of incarcerated witnesses Inmate Stephens  
7 #D-61914, Inmate Blackwell #E-72399, and Inmate Richard # C-27964 is  
8 GRANTED;

9 2. Plaintiff's motion for the transportation of other incarcerated witnesses is  
10 DENIED; and

11 3. The Clerk of the Court is DIRECTED to send courtesy copies of this order to:  
12 Plaintiff- Elroy W. Browning, T-82234:  
13 Substance Abuse Treatment Facility  
P.O. Box 5246  
Corcoran, CA 93212

14 Ladall Stephens, # D-61914:  
15 North Kern State Prison  
P.O. Box 567  
Delano, CA 93216

17 Kelly Blackwell, # E-72399:  
18 Salinas Valley State Prison  
P.O. Box 1020  
Soledad, CA 93960

20 Lewis Richard, # C-27962:  
21 California State Prison, Corcoran  
P.O. Box 8800  
Corcoran, CA 93212

22 IT IS SO ORDERED.

23 **Dated: October 3, 2007**

24 /s/ **Anthony W. Ishii**  
25 UNITED STATES DISTRICT JUDGE